

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT RIDDER
50 W. San Fernando Street
San Jose, CA 95113,

ALISON YOUNG and
CHRIS ADAMS
National Correspondents
KNIGHT RIDDER WASHINGTON BUREAU
700 12th Street, N.W., Suite 1000
Washington, D.C. 20005-3994

Plaintiffs,

v.

DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to order the production of agency records regarding policing by Department of Veterans Affairs of persons it has recognized or accredited, or denied recognition or accreditation, to help veterans to file compensation or other claims with the VA. Specifically, plaintiffs seek access to records regarding organizations recognized by the VA as eligible to nominate individuals to be accredited by the VA to represent veterans in the preparation, presentation and prosecution of claims for veterans benefits. Plaintiffs also seek access to

records regarding VA revocation, suspension or denial of recognition to any such organization, or of accreditation to any such individual.

2. In this FOIA action, plaintiffs further seek to order the production of agency records, consisting of data from the Pending Issue File (“PIF”), the Compensation and Pension Master Record File (“C&P Master File”), the C&P Minimaster File (“C&P Mini File”), the C&P Longitudinal File, and the Beneficiary Identification and Records Locator Subsystem Death File (“BIRLS Death File”), of the Veterans Benefits Administration within the Department of Veterans Affairs. The PIF, C&P Master File, C&P Mini File, the C&P Longitudinal File and BIRLS Death File are electronic databases maintained to process or track veteran benefits claims. Plaintiffs also seek access to the data dictionaries for the PIF, C&P Master File, C&P Mini File, and the record layout for the C&P Mini File, which records contain no information specific to any veteran.

3. The VA has gone to extraordinary lengths to frustrate public access to the records that plaintiffs have requested. To illustrate, the VA has insisted that plaintiffs pay more than \$41,000 to the VA to copy numerous records that plaintiffs did not request rather than search for those records that plaintiffs did request, treated a FOIA appeal as a new request for records, refused to disclose non-exempt information for visual inspection, made bald and apparently frivolous exemption claims, raised objections sequentially, required multiple administrative appeals, provided estimated timetables for processing some of plaintiffs’ requests that were not kept, and otherwise delayed rather than expedited plaintiffs’ requests. In this regard, in an interview with plaintiffs on October 8, 2004, and with respect to various FOIA requests from plaintiffs, Tim McClain, the General Counsel of the VA, stated “I will agree that we have not provided you with everything to which you are entitled.”

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552 (a)(4)(B) and 552(a)(6)(E)(iii), which provide for jurisdiction in federal court of an action under FOIA, and 28 U.S.C. § 1331, which provides for federal court jurisdiction of actions involving questions of federal law.

5. Venue is proper in this judicial district pursuant to 5 U.S.C. § 552 (a)(4)(B), which provides for the filing in the United States District Court for the District of Columbia of a complaint seeking disclosure under FOIA. Venue is also proper in the District of Columbia pursuant to 28 U.S.C. § 1391(b) because the defendant resides here and because the cause of action arose here.

PARTIES

6. Plaintiff Knight Ridder is the publisher of 31 daily newspapers in 28 markets in the United States, with 8.7 million readers daily and 12.6 million on Sunday, including the Detroit Free Press, Miami Herald, and the Philadelphia Inquirer. Knight Ridder also publishes non-daily papers and other publications. In addition to serving Knight Ridder publications, Knight Ridder Washington Bureau serves more than 350 client newspapers of the Knight Ridder Tribune News Services, with Washington, D.C., national and international news coverage. Among other beats, correspondents for the Washington Bureau of Knight Ridder report on the operations and activities of the federal government, including the Department of Veterans Affairs.

7. Plaintiffs Alison Young and Chris Adams are national correspondents for the Washington Bureau of Knight Ridder and, on behalf of Knight Ridder, Ms. Young and Mr. Adams requested the records to which plaintiffs seek access.

8. Defendant the Department of Veterans Affairs ("VA") is the agency of the United States that is responsible for the administration of the federal government's benefit and service programs for veterans and it has possession of, and control over, the records that plaintiffs seek.

BACKGROUND FOR ALISON YOUNG'S REQUESTS

9. There are some 25 million living veterans of the United States military (U.S. Army, Navy, Marine Corps., Air Force and Coast Guard), according to the Department of Veterans Affairs. Veterans are entitled to various benefits for their military service to the U.S. including disability compensation and pensions.

10. The VA is authorized by federal law to "recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as the Secretary may approve, in the preparation, presentation, and prosecution of claims under laws administered by the Secretary." 38 U.S.C. § 5902.

11. The VA has promulgated regulations the purpose of which are "to ensure that claimants for Department of Veterans Affairs benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veteran's benefits." 38 C.F.R. § 14.626.

12. An organization must meet a series of regulatory requirements to be recognized to represent claimants for veterans benefits. Among other requirements, the organization must show through written submissions that it is taking "affirmative action, including training and

monitoring of accredited representatives, to ensure proper handling of claims.” 38 C.F.R. § 14.628(d)(v). The VA “may request further information from any recognized organization, including progress reports, updates, or verifications. *Id.* at § 14.628(f).

13. VA regulations further require accreditation of service organization representatives. 38 C.F.R. § 14.629(a). In recommending a person to be a service organization representative, the sponsoring organization must certify that the person is of good character, and has demonstrated an ability to represent claimants before the Department of Veterans Affairs, among other things. If challenged, the VA must verify the qualifications of a prospective representative.

14. The VA accreditation of a service organization representative shall be cancelled for any unlawful, unprofessional or unethical practice, as well as if the “representative’s performance before the Department of Veterans Affairs demonstrates a lack of the degree of competence necessary to adequately prepare, present, or prosecute claims for veteran’s benefits.” 38 C.F.R. § 14.633(d). A representative whose accreditation is noticed for cancellation has a right to a hearing, during which time his accreditation is suspended. *Id.* at § 14.633(e)(2)(ii).

REQUEST FOR ACCREDITATION RECORDS

15. By letter dated April 15, 2004, plaintiffs Knight Ridder and Alison Young requested the VA to provide public access to agency records “relating to the revocation/suspension of accreditation of veterans service officers/national service officers during the period Jan. 1, 1999 to the present.” Plaintiffs specified that these records “shall include, but not be limited to correspondence with the officer or their organizations about the revocation, documents relating to reason for the revocation, and documents relating to the person or entity that initiated the complaint for revocation/suspension.”

16. Plaintiffs requested expedited review of their FOIA request given the public importance of this information and their intention to report about it in Knight Ridder newspapers. Plaintiffs also requested the VA to waive fees associated with processing their FOIA request.

17. By letter dated June 30, 2004, plaintiffs amended their request to include information about any applications for service officer accreditation that have been denied by the VA. Plaintiffs also requested the VA to inform them of the status of their request “[g]iven that this request has been pending for more than two months (and the VA reports to the GAO that the median time it takes the agency [to] process a ‘complex’ FOIA request is just 25 days).”

18. By letter dated July 20, 2004, the VA denied plaintiffs’ request, while acknowledging that responsive records exist and that the agency had not searched for them. Instead the VA offered to provide plaintiffs with access to records regarding rejected, revoked or suspended veterans service officers/national service officers only if plaintiffs agreed to pay the VA to copy 11,000 folders of records regarding all veterans service officers/national service officers. According to the VA, most of these records to be copied are not responsive to plaintiff’s FOIA request. The VA represented that [t]he cost to furnish copies of these 11,000 folders would be approximately \$41,250.00.”

19. By letter dated August 9, 2004, plaintiffs appealed the denial of their FOIA request. In their appeal, plaintiffs specifically identified four revocation actions for which the VA should have records as illustrative of records responsive to their request and challenged the VA imposed fee.

20. By letter dated September 3, 2004, rather than respond to plaintiffs’ appeal on the merits, the VA remanded plaintiffs’ FOIA request to the office from which the denial originated for a “superceding” decision directed to only records of de-accreditation “for cause or

involuntarily.” The VA instructed plaintiffs to re-appeal should they “disagree with the response once that decision is rendered,” with the second appeal processed based upon the date the VA received the first appeal.

21. By letter dated September 9, 2004, the VA assigned plaintiffs’ request a new tracking number as if it were a new FOIA request and represented that “an initial response will be mailed to you as soon as possible.”

22. By letter dated September 17, 2004, plaintiffs protested to the VA Office of General Counsel about the mishandling of their April 15, 2004 FOIA request. Through telephone calls and emails plaintiffs also requested the VA to rescind its remand of their FOIA request and to determine their August 9, 2004 appeal regarding records of revocations, suspensions or denials of accreditation.

23. By letter dated September 21, 2004, the VA provided plaintiffs with a few documents relating to accreditation actions against two veteran service officers but apparently withheld others without explanation, and provided no records as to the other two revocation actions specifically made known to the VA by plaintiffs’ August 9th FOIA appeal.

24. On October 8, 2004, defendant notified plaintiffs that it would process their August 9, 2004 appeal.

25. Over twenty working days have passed since plaintiffs’ August 9, 2004 administrative appeal and defendant has neither granted nor denied their appeal.

REQUEST FOR RECOGNITION RECORDS

26. By letter dated July 23, 2004, plaintiffs requested access to certain records regarding “veterans service organizations and other groups that relate to their recognition by the VA for accreditation purposes.” As with its earlier request for accreditation records, plaintiffs

requested expedited processing of their request for recognition records. To avoid issue regarding fees, plaintiffs requested to first review responsive records and then determine whether to copy any of them.

27. By letter dated August 24, 2004, the VA denied in full plaintiffs' request, citing without explanation Exemptions 2 and 5 to the FOIA.

28. By letter dated August 26, 2004, plaintiffs appealed the denial of their request.

29. By letter dated September 15, 2004, the VA determined to reconsider its denial and to provide a superceding decision. The VA allowed that any further appeal by plaintiffs would be processed based upon a receipt date of August 26, 2004.

30. By letter dated September 29, 2004, the VA again denied plaintiffs' request in full, this time citing FOIA Exemptions 2, 5 and 6 and remarked only that "[t]hose exemptions protect internal administrative, pre-decisional, and personal privacy matters, respectively." The VA acknowledged that records responsive to plaintiffs' request contain non-exempt information. Rather than segregate information claimed by the VA to be exempt under these exemptions and make public the non-exempt information, as required by FOIA, the VA withheld all records in full.

31. By letter dated October 5, 2004, plaintiffs' appealed again the denial of their FOIA request, which appeal related back to a receipt date of August 26, 2004.

32. Over twenty working days have passed since plaintiffs' August 26, 2004 administrative appeal and defendant continues to deny plaintiffs access to the requested records.

REQUEST FOR RECORDS REGARDING DE-RECOGNITION OF THE REGULAR VETERANS ASSOCIATION AND THE AMERICAN VETERANS COMMITTEE

33. By letter dated August 9, 2004, plaintiffs requested the records in files regarding the Regular Veterans Association and the American Veterans Committee, which organizations

the VA recognized, and later revoked recognition, for accreditation purposes. Plaintiffs requested a fee waiver and expedited review of their request.

34. By letter dated September 21, 2004, the VA failed to address whether it would produce or withhold on claim of exemption the requested records from the VA files on the two service organizations, which files should include the initial applications for recognition by these organizations and all records created or obtained by or for the VA thereafter regarding its recognition of them.

35. On September 30, 2004, plaintiffs asked the VA to “take another look at what was requested and provide a response that addresses this FOIA request.”

36. Over ten working days have passed since plaintiffs renewed their FOIA request and defendant has provided them with no response.

REQUEST FOR RECORDS REGARDING TWO CAUTIONARY LETTERS

37. By letter dated August 25, 2004, plaintiffs requested records relating to two cautionary letters sent by the VA to veteran service officers, and requested a fee waiver and expedited review of their request.

38. By letter dated September 21, 2004, the VA produced only those records specifically identified in plaintiffs’ FOIA request as examples of records that they seek and failed to address whether the VA searched for any other responsive records or whether such records would be made public.

39. On September 30, 2004, plaintiffs appealed to defendant to determine whether additional records are responsive to their request.

40. On October 8, 2004, the VA represented to plaintiffs that should it locate any additional cautionary letters, it will provide them to plaintiffs, but it did not commit to conduct

an adequate search for additional cautionary letters.

BACKGROUND FOR CHRIS ADAMS' FOIA REQUESTS

41. To provide benefits and services to veterans and their dependants, the Veterans Benefits Administration within the Department of Veterans Affairs records the payment, and the processing of claims for payment, of veterans benefits, in electronic databases known as the C&P Master File, C&P Mini File, PIF, Longitudinal File and BIRLS, among others.

42. The C&P Master File, C&P Mini File, PIF, C&P Longitudinal File and BIRLS Death File each have a record layout that sets forth the fields of information in the database and their location therein.

43. The Department of Veterans Affairs has records to explain the fields of information set forth in the record layout for the C&P Master File, C&P Mini File, PIF, C&P Longitudinal File and BIRLS Death File, including the name of each field, a description of each field, and other information necessary to analyze the data contained within the database. These explanatory records are known as data dictionaries.

44. The Department of Veterans Affairs has made available record data, layouts, and data dictionaries of its databases to the public.

REQUESTS FOR DATA BASE INFORMATION

45. On April 15, plaintiffs Knight Ridder and Chris Adams requested the VA to provide public access to agency records consisting of the C&P Mini File, BIRLS Death File and C&P Longitudinal Files and their corresponding record layouts and data dictionaries. Plaintiffs requested a waiver of fees associated with this and other requests made under Chris Adams' signature.

46. By letters dated May 12, 2004, plaintiffs requested the VA to provide public

access to agency records consisting of the data in the PIF and C&P Master File, and their corresponding record layouts and data dictionaries.

47. By letter dated September 7, 2004, plaintiffs revised their request for records containing PIF data with the understanding that the VA would treat the revised request as having been made on May 12, 2004.

48. Over ten working days have passed since the VA received plaintiffs' requests and it has not responded to their requests for access to the data of the C&P Master File, the C&P Mini File, the C&P Longitudinal File, PIF or BIRLS Death File, or the data dictionary and record layout for the C&P Mini File.

CAUSE OF ACTION

49. Plaintiffs reallege paragraphs 1-48, inclusive, of the Complaint above, and incorporate them herein by reference as if they were fully set forth.

50. Plaintiffs have a statutory right to the records they requested, and there is no legal basis for defendant's refusal to disclose these records to plaintiffs.

51. Plaintiffs also have a statutory right to expedited processing of their requests, and there is no legal basis for defendant's refusal to expedite.

52. Defendant's refusal to expedite plaintiffs' requests, to properly process plaintiffs' requests, and to disclose the requested records, is causing injury to plaintiffs as plaintiffs are unable to review, publish and report on these records and the information that they contain.

WHEREFORE, plaintiffs pray that this Court:

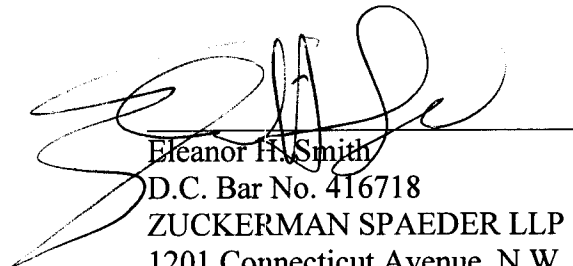
- (1) Declare that records requested by plaintiffs under FOIA, must be disclosed under FOIA;
- (2) Enjoin the defendant to disclose these records to plaintiffs;

(3) Find that the circumstances surrounding the withholding of the requested records raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding;

(4) Award plaintiffs their attorneys fees and costs in this action; and

(5) Grant plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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